

## **SUBCHAPTER II. GUARDIAN AND WARD.**

### **Article 4.**

#### **Purpose and Scope; Jurisdiction; Venue.**

#### **§ 35A-1201. Purpose.**

- (a) The General Assembly of North Carolina recognizes that:
  - (1) Some minors and incompetent persons, regardless of where they are living, require the assistance of a guardian in order to help them exercise their rights, including the management of their property and personal affairs.
  - (2) Incompetent persons who are not able to act effectively on their own behalf have a right to a qualified, responsible guardian.
  - (3) The essential purpose of guardianship for an incompetent person is to replace the individual's authority to make decisions with the authority of a guardian when the individual does not have adequate capacity to make such decisions.
  - (4) Limiting the rights of an incompetent person by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights.
  - (5) Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him.
  - (6) Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.
- (b) The purposes of this Subchapter are:
  - (1) To establish standards and procedures for the appointment of guardians of the person, guardians of the estate, and general guardians for incompetent persons and for minors who need guardians;
  - (2) To specify the powers and duties of such guardians;
  - (3) To provide for the protection of the person and conservation of the estate of the ward through periodic accountings and reports; and
  - (4) To provide for the termination of guardianships. (1987, c. 550, s. 1.)

#### **§ 35A-1202. Definitions.**

The following definitions apply in this Subchapter:

- (1) **Accounting.** – The financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom the reports are required to be filed.
- (2) **Clerk.** – The clerk of superior court.

- (3) Designated agency. – The State or local human services agency designated by the clerk in an order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, intellectual disability, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (4) Disinterested public agent. – The director or assistant directors of a county department of social services. Except as provided in G.S. 35A-1213(f), the fact that a disinterested public agent provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.
- (5) Estate. – Any interest in real property, choses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property.
- (6) Financial report. – The report filed by the guardian concerning all financial transactions, including receipts and expenditures of the ward's money, sale of the ward's property, or other transactions involving the ward's property.
- (7) General guardian. – A guardian of both the estate and the person.
- (8) Guardian ad litem. – A guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.
- (9) Guardian of the estate. – A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.
- (10) Guardian of the person. – A guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.
- (11) Incompetent person. – A person who has been adjudicated to be an "incompetent adult" or "incompetent child" as defined in G.S. 35A-1101(7) or (8).
- (12) Minor. – A person who is under the age of 18, is not married, and has not been legally emancipated.
- (13) Multidisciplinary evaluation. – An evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.
- (14) Status report. – The report required by G.S. 35A-1242 to be filed by the general guardian or guardian of the person.

- (15) Ward. – A person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction. (1987, c. 550, s. 1; 1997-443, s. 11A.13; 2012-151, s. 12(b); 2014-100, s. 12D.4(a); 2018-47, s. 1(c).)

**§ 35A-1203. Jurisdiction; authority of clerk.**

(a) Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the person, guardians of the estate, or general guardians for incompetent persons and of related proceedings brought or filed under this Subchapter. Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the estate for minors, for the appointment of guardians of the person or general guardians for minors who have no natural guardian, and of related proceedings brought or filed under this Subchapter.

(b) The clerk shall retain jurisdiction following appointment of a guardian in order to assure compliance with the clerk's orders and those of the superior court. The clerk shall have authority to remove a guardian for cause and shall appoint a successor guardian, following the criteria set forth in G.S. 35A-1213 or G.S. 35A-1224, after removal, death, or resignation of a guardian.

(c) The clerk shall have authority to determine disputes between guardians and to adjust the amount of the guardian's bond.

(d) Any party or any other interested person may petition the clerk to exercise the authority conferred on the clerk by this section.

(e) Where a guardian or trustee has been appointed for a ward under former Chapter 33 or former Chapter 35 of the General Statutes, the clerk, upon his own motion or the motion of that guardian or trustee or any other interested person, may designate that guardian or trustee or appoint another qualified person as guardian of the person, guardian of the estate, or general guardian of the ward under this Chapter; provided, the authority of a guardian or trustee properly appointed under former Chapter 33 or former Chapter 35 of the General Statutes to continue serving in that capacity is not dependent on such motion and designation. (1987, c. 550, s. 1; 2003-13, s. 3.)

**§ 35A-1204. Venue.**

(a) Venue for the appointment of a guardian for an incompetent person is in the county in which the person was adjudicated to be incompetent unless the clerk in that county has transferred the matter to a different county, in which case venue is in the county to which the matter has been transferred.

(b) Venue for the appointment of a guardian for a minor is in the county in which the minor resides or is domiciled.

(c) Venue for the appointment of an ancillary guardian for a nonresident of the State of North Carolina who is a minor or who has been adjudicated incompetent in another state, and who has a guardian of the estate or general guardian in the state of his residence, is in any county in which is located real estate in which the nonresident ward has an ownership or other interest, or if the nonresident ward has no such interest in real estate, any county in which the nonresident owns or has an interest in personal property. (1987, c. 550, s. 1.)

**§ 35A-1205. Transfer to different county.**

At any time before or after appointing a guardian for a minor or incompetent person the clerk may, on a motion filed in the cause or on the court's own motion, for good cause order that the matter be transferred to a different county. The transferring clerk shall enter a written order directing the transfer under such conditions as the clerk specifies. The clerk in the transferring county shall transfer all original papers, documents, and orders from the guardianship and the incompetency proceeding, if any, to the clerk of the transferee county, along with the order directing the transfer. The clerk in the transferee county shall docket and file the papers in the estates division as a basis for jurisdiction in all subsequent proceedings. The clerk in the transferring county shall close his file with a copy of the transfer order and any order adjudicating incompetence or appointing a guardian. (1987, c. 550, s. 1.)

**§ 35A-1206. Letters of appointment.**

Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerk's seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian. (1987, c. 550, s. 1.)

**§ 35A-1207. Motions in the cause.**

(a) Any interested person may file a motion in the cause with the clerk in the county where a guardianship is docketed to request modification of the order appointing a guardian or guardians or consideration of any matter pertaining to the guardianship.

(b) The clerk shall treat all such requests, however labeled, as motions in the cause.

(c) A movant under this section shall obtain from the clerk a time, date, and place for a hearing on the motion, and shall serve the motion and notice of hearing on all other parties and such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil Procedure, unless the clerk orders otherwise.

(d) If the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate, the clerk may enter an appropriate ex parte order to address the emergency pending disposition of the matter at the hearing. (1987, c. 550, s. 1.)

**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321. (2007-502, s. 8.)

**§ 35A-1209: Reserved for future codification purposes.**